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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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James W. Cree

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12/19/2008

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EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

12/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/491,721	Applicant(s) CREE ET AL.	
	Examiner Norca L. Torres-Velazquez	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-49 is/are rejected.
- 7) ☒ Claim(s) 36-37, 42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 25, 2008 has been entered.

Claim Objections

2. Claim 42 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 42 depends on canceled claim 1. For examining purposes, the Examiner assumes that it depends on claim 33.

3. Claim 36 is objected to because of the following informalities: Claim 36 is listed twice. The Examiner advises renumbering one of the claims as claim 50. Claims 37 is also objected as being dependent on claim 36. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 33-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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6. Claim 33 recites the limitation "said tear resistant" in line 11. There is insufficient antecedent basis for this limitation in the claim. Claims 34-49 are also rejected as being dependent on claim 33.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 33-49 are rejected under 35 U.S.C. 102(e) as being anticipated by SHAWVER et al. (US 6,649,548 B1) in view of HASSENBOEHLER et al. (US Patent No. Re 35-206).

SHAWVER et al. discloses a nonwoven web/film laminate which exhibits significant tear strength attributes and that can be used as a fabric in personal care products. The laminate is formed of at least two layers in an SF formation. The spunbond (S) layer of the laminate is formed of preferably metallocene catalyzed polypropylene. The film (F) layer is formed of a polyolefin which may be metallocene-catalyzed. (Abstract; refer to Col. 3, lines 14-16; Col. 7, lines 29-36) For the film, the reference teaches using elastomeric polymers such as metallocene polyethylene based polymers and also teaches the use of block copolymer blends. (Refer to Col. 7, lines 55-67 and Col. 8, lines 9-22) The reference teaches a film with micro pores (which are equated to perforations). (Col. 10, lines 26-30) The reference further teaches the use of inelastic metallocene-catalyzed polypropylene spunbond webs. (Col. 9, lines 53-67). The

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reference also teaches that the multilayer laminate may be in configurations such as SFS. (Refer to Col. 4, lines 42-46) The fibrous nonwoven web can be formed on a conventional fibrous nonwoven web forming apparatus. The long, essentially continuous fibers are deposited onto a forming wire as an unbonded web and the unbonded web is then sent through a pair of bonding rolls to bond the fibers together and increase the tear strength of the resultant web support layer. One or both of the rolls are often heated to aid in bonding. The film and the nonwoven are laminated to one another by thermal point bonding and generally, the maximum bond point surface area for a given area of surface on one side of the laminate will not exceed about 50% of the total surface area. (Refer to Col. 10, lines 39-67; also refer to Col. 11, lines 11-12) In the examples, the reference teaches that the denier of the spunbond produced was 2 dpf. (Col. 12, line 59) On Table 3, the reference teaches spunbond of polypropylene fibers with a basis weight of about 25 gsm. (Refer to Col. 13) On Table 2, the reference discloses a film with a basis weight of about 63 gsm. (Col 13)

It is the Examiner's position that the laminate of SHAWVER et al. reads on the presently claimed laminate. The films made of elastomeric polymers such as metallocene polyethylene based polymers read on the claimed elastic polymeric film; inelastic metallocene-catalyzed polypropylene spunbond webs read on the claimed first and second nonwoven webs.

SHAWVER et al. does not disclose the processing limitation of laterally consolidating the fabric layers or setting the fabric layers in a transversely consolidated state before bonding to the film.

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HASSENBOEHLER et al. teaches transversely consolidating a nonwoven web. (Abstract). HASSENBOEHLER et al. teaches that the nonwoven materials exhibit remarkable elasticity in the cross-direction (Col. 8, lines 30-34)

Thus, it would have been obvious to a person having ordinary skill in the art at the time the invention to transversely consolidate the web of SHAWVER et al. in order to increase the elasticity in the cross-direction, as taught by HASSENBOEHLER et al. A reference may be understood by the artisan as suggesting a solution to a problem that the reference does not discuss. See KSR, 137 S. Ct. at 1742, 82 USPQ2d at 1397 “Common sense teaches... that familiar items may have obvious uses beyond their primary purposes, and in any cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle. ... A person of ordinary skill is also a person of ordinary creativity, not an automaton.”).

Although the prior art above does not explicitly teach the claimed properties of extensible elongation value and ultimate force to break of the laminate it is reasonable to presume that these properties are inherent to the laminate from the combination of SHAWVER et al. and HASSENBOEHLER et al. Support for said presumption is found in the use of like materials (i.e. similar laminates made of similar film and nonwoven materials that are transversely consolidated and are used for similar applications.) The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties of extensible elongation value and ultimate force to break would obviously have been present once the product from the combination of SHAWVER et al. and HASSENBOEHLER et al. is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102. The same applies for the claimed property of Dart impact value of the

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elastic polymeric film. Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner, et al.* (CCPA) 186 USPQ 80

Response to Arguments

9. Applicant's arguments with respect to claims 33-49 have been considered but are moot in view of the new ground(s) of rejection.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Norca L. Torres-Velazquez/
Primary Examiner, Art Unit 1794

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December 17, 2008